STATE OF MICHIGAN

COURT OF APPEALS

WHITE RIVER TOWNSHIP,

Plaintiff-Appellee,

v

SHELDON A. HAMILTON and JANICE SEYEDIN,

Defendants-Appellants.

UNPUBLISHED
August 20, 2020

No. 348564
Muskegon Circuit Court
LC No. 18-002624-CZ

Before: SHAPIRO, P.J., and SERVITTO and LETICA, JJ.

PER CURIAM.

Defendants Sheldon A. Hamilton and Janice Seyedin appeal from the trial court's order entering a default judgment against them and in favor of plaintiff White River Township, and issuing declaratory and injunctive relief requiring that defendants—father and daughter, respectively—bring their jointly owned property into full compliance with all applicable ordinances and codes within 90 days. We affirm.

Plaintiff Township filed a complaint against defendants seeking declaratory, equitable, and injunctive relief. The Township alleged that defendants owned real property located within the Township at the street address of 6856 Sunset Lane, Montague, Michigan (Sunset Lane Property). The Township alleged that defendants both lived at 344 Elm Place, Highland Park, Illinois (Elm Place Property). According to the complaint, "[f]or a number of years, there has been a significant amount of junk and refuse" visible at the Sunset Lane Property, as well as a dilapidated and structurally unsound wooden building, that presented a hazard and was in violation of numerous Township ordinances and codes. The Township attached to its complaint a November 7, 2017 letter threatening the initiation of legal proceedings, which it had addressed to Hamilton at 2064 Linden Avenue, Highland Park, Illinois (Linden Avenue Address).

Unable to obtain personal service, the Township filed a motion for alternative service of the summons and complaint. A verified statement of attempts set forth the efforts to serve defendants at the Sunset Lane Property. The process server stated that at each of his three visits no one was home and he posted a business card with instructions to contact him. The server also confirmed residency with the neighbors. He eventually received a phone call from Seyedin stating that Hamilton had another residence in Northern Michigan, but no additional information was provided. As stated in an affidavit of nonservice supporting the motion, a different process server made eighteen attempts to serve process at the Highland Park, Illinois addresses and also at an address in Massachusetts, including "door bells, loud door knocking and loud window knocking," but was unable to establish contact with anyone at these addresses. The process server further observed that there were cars parked on the properties and noises heard from within the homes and that it was likely defendants were purposefully evading service.

The trial court granted the motion and ordered that alternative service of the summons and complaint, as well as a copy of each order permitting alternative service, "shall be made by the following method(s)": "[f]irst-class mail to last known address"; "[t]acking or firmly affixing to the door at [the Sunset Lane Property]"; and "[p]ublishing in a local newspaper for 3 consecutive weeks." The Township later filed proofs of service asserting that it served defendants by first-class mail at the Sunset Lane Property. The proofs of service also reflected—and defendants do not dispute—that the Township tacked or firmly affixed the summonses and complaints on the door of the Sunset Lane Property and published a notice in a local newspaper. Later, the Township requested, and the clerk entered, an entry of default for both defendants for failure to plead or otherwise defend the action and again served a copy of the entry of default against both parties at the Sunset Lane Property.

When the Township moved for the entry of default judgments in accordance with the court rules, it sent the associated notice to both the Linden Avenue Property and the Sunset Lane Property. Two weeks later, defendants filed a response disputing the Township's right to enter a default judgment and asked that the trial court set aside the defaults. Defendants contended that because of invalid service, the trial court lacked personal jurisdiction over them and that, absent personal jurisdiction, the trial court must set aside the default. They maintained that the Township "clearly knew" that they lived in Illinois, that the Sunset Lane Property was a "seasonal cottage," and that all bills (including tax bills and assessment notices sent by the Township) were mailed to the Linden Avenue Property. Defendants provided exhibits supporting these contentions.

At oral argument, defense counsel conceded that the Township otherwise complied with the trial court's orders by posting and publishing notice of the pendency of the lawsuit. He argued only that the Sunset Lane Property was not the "last known address" of either defendant and that the Township knew that. Defense counsel also emphasized that when the Township mailed the notice of entry of default judgment to the Linden Avenue Property, his clients received that notice and timely responded. In response, the Township's counsel recited its extensive efforts to personally serve defendants at the Illinois addresses and the circumstances suggesting defendants were purposefully evading service. Counsel noted that the Sunset Lane Property was "[t]he only address that we ever received a response from," and maintained that this was the last known

address. The trial court denied the motion to set aside the default. After another hearing,[1] the trial court entered a final default judgment. Defendants now appeal.

"A trial court's decision regarding a motion to set aside a default judgment is reviewed for an abuse of discretion." *Lawrence M Clarke, Inc v Richo Const, Inc*, 489 Mich 265, 272; 803 NW2d 151 (2011). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Shawl v Spence Bros, Inc*, 280 Mich App 213, 220-221; 760 NW2d 674 (2008) (quotation mark and citation omitted). Whether the trial court had personal jurisdiction over a party is a question of law that this Court reviews de novo. See *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004).

The setting aside of a default or a default judgment is governed by MCR 2.603(D)(1), which provides:

> A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and a statement of facts showing a meritorious defense, verified in the manner prescribed by MCR 1.109(D)(3), is filed.

Defendants do not argue that there was good cause for setting aside the default or that they have a meritorious defense. Rather, they contend that because the Township did not send the summons and complaint to their last known address, service was improper and therefore the court lacked personal jurisdiction over them.

"Before a court may obligate a party to comply with its orders, the court must have in personam jurisdiction over the party." *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012) (quotation marks and citation omitted). Because defendants fall within Michigan's long-arm statute, MCL 600.705, personal jurisdiction in this case turns on whether defendants received constitutionally adequate notice of the litigation to satisfy the minimum requirements of due process. See *W H Froh, Inc v Domanski*, 252 Mich App 220, 226-227; 651 NW2d 470 (2002). The court rules governing service of process "are intended to satisfy the due process requirement that a defendant be informed of an action by the best means available under the circumstances." MCR 2.105(J)(1). The court rules provide different ways to effectuate service of process, including personal service and substitute service. See MCR 2.105(A)-(B). "On a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." MCR 2.105(I)(1).

Defendants do not argue that the trial court erred by permitting alternative service in the first instance in light of the Township's diligent, yet unsuccessful, attempts at personal service. Instead, they question whether mailing the summonses and complaints to the Sunset Lane Property was sufficiently consistent with the exact terms of the trial court's orders permitting alternative service, which required that the Township obtain alternative service by mailing those documents

[1] This hearing concerned the substance of what the final default judgment should or should not require of defendants. Defendants participated fully in this hearing.

via first-class mail to each respective defendant's "last known address." Defendants rely on the caselaw stating "[t]he statute authorizing substituted service of process must be strictly complied with in order to confer jurisdiction upon the court," *Mintz v Ladendord*, 247 Mich 546, 548; 226 NW 258 (1929), and assume that strict compliance with an order allowing for alternative service is also required for proper jurisdiction.

Importantly, the trial court's order permitting alternative service did not specifically require that the Township utilize any particular address. Defendants' respective Illinois addresses were printed in the caption of those orders and easily available had the trial court chosen to require that method. In support of their argument, defendants cite a 1970s-era federal district court case, *Kennedy v United States*, 403 F Supp 619 (WD Mich, 1975), interpreting a federal statute governing how the Internal Revenue Service must mail notices of tax deficiencies to the taxpayer's "last known address." If there was any similar mandate at issue here, *Kennedy* might be persuasive, although not binding precedent. See *Linsell v Applied Handling, Inc*, 266 Mich App 1,16; 697 NW2d 913 (2005). But there is no such requirement in the court rules governing alternative service; the trial court was acting within its discretion when it directed the Township to mail the complaint to defendants' "last known address" in addition to publication and posting.

Moreover, there was at least some reason for the Township to think that the Sunset Lane Property was the most appropriate address for reaching defendants. The record reflects that a process server tried unsuccessfully to personally serve defendants at the Illinois addresses about eighteen times, while neighbors confirmed that one or both defendants maintained at least part-time residency at the Sunset Lane Property. The record also reflects that the Township's process server actually did make direct contact with Seyedin after leaving his business card at the Sunset Lane Property and that she informed him that Hamilton now lived in Northern Michigan. Although there was other evidence including tax records and previous correspondence with Hamilton that might have suggested that it was more likely to find defendants in Illinois, our Supreme Court "has cautioned appellate courts not to substitute their judgment in matters falling within the discretion of the trial court, and has insisted upon deference to the trial court in such matters." See *Amco Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003). We conclude that the trial court did not abuse its discretion by denying the motion to set aside the entries of default.[2]

Further, the trial court did not err by determining that the alternative service in this case was reasonably calculated to provide defendants notice of the pending action. The Township posted the summonses and the complaints at the Sunset Lane Property and published an announcement of the pendency of the action in a local newspaper. They also mailed the summonses and complaints to the Sunset Lane Property, which they had reason to believe was defendants' last known address and was at the very least an address that was definitively associated with defendants. Further, there was evidence that the process server spoke directly to Seyedin about the need to arrange for delivery of process, that Seyedin asserted that Hamilton lived not in

[2] We reject defendants' suggestion that the Township intentionally chose to mail the summonses and complaint to the Sunset Lane Property because they knew that it would result in default. There is no evidence supporting that contention.

Illinois but in Northern Michigan, and that process servers attempted service and left business cards announcing the same at all of defendants' known addresses. We are satisfied that the minimum due-process requirements for obtaining personal jurisdiction were met in this case.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Deborah A. Servitto
/s/ Anica Letica